

BEST AVAILABLE COPY

REMARKS**Reference to Related Application**

Applicant amended the specification of the present application in a Preliminary Amendment dated September 26, 2003, submitted with the filing of the present application, to indicate that the present application is a divisional application and its claim to priority.

Drawings

Applicant submits herewith a replacement drawing for Figure 3 to alleviate the objection to this drawing.

Rejection of Claims 1-6 Under 35 U.S.C. 112, ¶ 2

Applicant has amended claim 1 to change the first reference to "the plurality of dispensing points" to "a plurality of dispensing points" to correct a typographical error and alleviate this rejection.

Obviousness-Type Double Patenting Rejection

Applicant submits herewith a Terminal Disclaimer with respect to U.S. Patent No. 6,622,757 to alleviate this rejection.

BEST AVAILABLE COPY

Rejection Under 35 U.S.C. 102(e) - Rowland

The Applicant called Examiner Maust by voice mail on March 22, 2004 to determine which claims were being rejected in view of Rowland due to the typographical error of the Office Action mailed on January 26, 2004 stating that claims 83-85 are rejected. The Examiner indicated by return voice mail that claims 1-2, 5-7, 9-12, 15-16, 19-20, 23, 25-28 in the Office Action mailed on January 26, 2004 are rejected in view of Rowland.

Claims 1-2, 4-5

Applicant has amended claim 1 to incorporate the limitations of claim 3 and has cancelled claim 3. Claim 3 was allowed in the Office Action mailed on January 26, 2004 if a terminal disclaimer is filed to overcome an obviousness-type double patenting rejection, and if the indefiniteness of claim 1 is resolved; both of which have been resolved in this response. Therefore, claims 1-2 and 4-5 all include the limitation in claim 3 which is allowable in view of Rowland. Therefore, claims 1-2 and 4-5 are allowable.

Claim 6

Applicant has amended claim 6 to be in independent form since original claim 6 is not anticipated by Rowland. Claim 6 requires that the method include:

wherein the plurality of fuel dispensing points form a group of fuel dispensing points sharing a common vapor flow sensor, the method further comprising the step of determining a leaking dispensing point by determining which of the vapor recovered to fuel dispensed ratios does not lower in value.

If a fuel dispensing point contains a leak, it will cause the vapor recovered to fuel dispensed ratios for each of the fuel dispensing points in the group of fuel dispensing points that share a common vapor flow sensor to result in lower ratios for all dispensing

BEST AVAILABLE COPY

points in the group except the leaking dispensing point. This is because the lost vapor in the dispensing point having the leak is shared among all fuel dispensing points in the group since each share a common vapor flow sensor, but the vapor recovered registered as a result of the leaking dispensing point will not lower in value. (See Specification, p. 26-27, ¶¶ 0083, 0084).

This feature in claim 6 is not disclosed either expressly or inherently in Rowland. Rowland does disclose a variety of tests including determining the air-to-liquid (A/L) ratio for a dispensing hose to calibrate the vapor pump speed accordingly as part of commissioning tests. (See Rowland, col. 6, l. 34 – col. 7, l. 18; col. 9, ll. 28-42). However, Rowland does not determine if a dispensing point contains a leak, and Rowland does not determine which of the A/L ratios within a group of dispensing points does not lower to determine if a leak exists.

Claims 7-30 and New Claims 31-54

Applicant has cancelled claims 7-30 without prejudice, and presents new claims 31-54 to clarify the present invention, each of which are patentable over Rowland. Before discussing new claims 31-54 in view of Rowland, Applicant lists below the correlation between the new claims 31-54 and cancelled claims 7-30.

New claim 31 is based on original claims 7 and 9. New claim 32 is based on original claim 8. New claim 33 is based on original claims 8 and 10. New claim 34 is based on original claim 8. New claim 35 is based on original claims 23 and 25. New claim 36 is based on original claim 24. New claim 37 is based on original claim 24 and 26. New claim 38 is based on original claim 24. New claim 39 is based on original claim 15. New claim 40 is based on original claim 16. New claim 41 is based on original claim 17. New claim 42 is based on original claim 18. New claim 43 is based on original claims 7 and 9. New claim 45 is based on original claim 8. New claim 46 is based on original claims 8 and 10. New claim 47 is based on original claim 8. New claim 48 is based on original claim 19. New claim 49 is based on original claim 20. New claim 50 is based on original claim 21. New claim 51 is based on original claim 22. New claim 52 is based on original claims 23 and 25. New claim 54 is based on original

BEST AVAILABLE COPY

claim 24. New claim 55 is based on original claims 24 and 26. New claim 56 is based on original claim 24.

New claims 31-38 are not anticipated by Rowland. Claims 31 and 35, the independent claims in 31-38, require determining a first and second observed numbers of failed dispensing points and non-failed dispensing points, respectively. Claim 31 then requires determining a first and second expected number of failed and non-failed dispensing points. Then, a determination is made whether a fuel dispensing point has a true vapor recovery failure based on a calculation that is a function of both the failed and non-failed observations, and the failed and non-failed expectations.

Rowland does not categorize fuel dispensing points as either failed or non-failed like that in claims 31-38, and Rowland does not calculate a true vapor recovery failure for a fuel dispensing point like that in claims 31-38. Rather, with respect to vapor recovery functions, Rowland simply determines the A/L ratio of a fuel dispensing point and calibrates the vapor pump speed such that the A/L ratio is within desired limits as part of a commissioning test. (See Rowland, col. 6, l. 34 – col. 7, l. 18; col. 9, ll. 28-42).

New claims 39-54 are also not anticipated by Rowland. Claims 39 and 47, the independent claims in claims 39-54, require determining a proportion of vapor recovered to liquid dispensed ratios for a fuel dispensing point that indicates a failure and comparing that proportion to an expected proportion for that fuel dispensing point. This is carried out for all of the plurality of fuel dispensing points to determine which of the dispensing points has experienced a true failure.

Rowland does not determine a proportion of A/L ratios that indicate a failure for a fuel dispensing point like that in claims 39-54, and Rowland does not compare this proportion to an expected proportion to determine if any of the fuel dispensing points have a true vapor recovery failure. Rather, with respect to vapor recovery functions, Rowland simply determines the A/L ratio of a fuel dispensing point and calibrates the vapor pump speed such that the A/L ratio is within desired limits as part of a commissioning test. (See Rowland, col. 6, l. 34 – col. 7, l. 18; col. 9, ll. 28-42).

The undersigned attorney would welcome a telephone conference for the Examiner if the Examiner still does not believe that the invention, as claimed, is patentable.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By: 

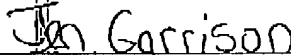
Steven N. Terranova
Registration No. 43,185
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

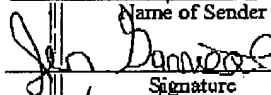
Date: April 22, 2004
Attorney Docket: 2500-016B

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS
BEING TRANSMITTED VIA FACSIMILE ON THE
DATE INDICATED BELOW TO:

Examiner: Maust T. Art Unit: 3751 Fax: 703-872-9306


Name of Sender


Signature

4/22/04
Date of Transmission

BEST AVAILABLE COPY